

# LEGAL ACTION OF WISCONSIN, INC.

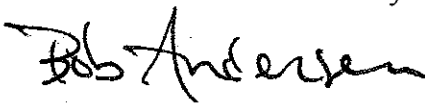
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TO: Assembly Committee on Children and Family Law

FROM: Bob Andersen 

RE: AB 9, relating to Requirements for Ordering Maintenance

DATE: March 7, 2007

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Family Law is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and housing). As a result, our organization has been extensively involved in family law issues over the years.

### 1. The Statutes Already Protect Against Abuses Being Made Where it Is Not Equitable to Grant Maintenance.

*Section 767.56* clearly makes the granting of maintenance **completely discretionary** with the court and *lists several factors that must be considered* before maintenance may be ordered. *It is our experience that it is very difficult to convince the courts to award maintenance in divorce cases as a rule in low income cases* even where there has been a long term marriage - or, at best, the courts will order a small amount of maintenance for a short time to give the non-working spouse a chance to find employment. *However, as indicated below, there are circumstances where an award of maintenance payments is appropriate and even critically important, no matter how long the marriage has lasted.*

The factors the statutes are as follows:

- (1) length of the marriage
- (2) age and physical and emotional health of the parties
- (3) division of property
- (4) educational level of each party at the time of the marriage and the time the action is commenced
- (5) earning capacity of the person seeking maintenance, including educational background, training, work experience, employment skills, length of absence from



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the job market, custodial responsibilities for the children, and the time and expense necessary to acquire sufficient education or training to find appropriate employment.

(6) the feasibility that the person seeking maintenance can become self supporting at a standard of living comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.

(7) tax consequences to each party

(8) any mutual agreement made by the parties before or during the marriage, according to terms of which one party has made a financial or service contributions to the other with expectations of reciprocity or other compensation in the future, where the repayment or compensation has not been made, or any mutual agreement concerning any arrangement for the financial support of the parties.

(9) the contribution by one party to the education, training or increased earning power of the other.

(10) such other factors as the court may in each case determine to be relevant.

2. **Purpose of maintenance is to provide support for a recipient spouse in accordance with the need and earning capacity of the parties and to ensure a fair and equitable financial agreement between the parties.**

Case law provides that maintenance can be used for 3 purposes - *to rehabilitate, to supplement the income of or to compensate a spouse*. Further, the court is supposed to determine maintenance by looking at two objectives - fairness and support. These propositions are set forth in the respective cases and are followed by practitioners throughout the state.

The most obvious and common example of the need for the consideration of maintenance is the common situation where the wife quits her educational opportunities so that her husband can complete an advanced degree - maybe taking seven years or more to become a doctor or lawyer or academician. The wife works at lesser paying jobs and even stays at home taking care of the children. As soon as the husband begins working in his profession, making \$150,000 or more, he meets somebody new and divorces his wife.

The woman is left without an education, at an older age, and with the responsibility for taking care of the children. Years have gone by since she attended school. All of this makes it very difficult to strike out again to fulfill the potential she should have had. Under current law, the equity of this situation could be considered and an appropriate maintenance order could be entered. Under this bill, no maintenance could be ordered, because the couple was not married for 15 years.

3. **Even Where the Parties Have Been Married for 15 Years and Would be Eligible for Maintenance Payments Under This Bill, Maintenance Would be Limited to Paying for the Payee's Minimal, Reasonable "Needs," But in No Case Longer than 3 Years, with Limited Exceptions in the Case of Educational Contributions or Disability.**

This means that a mother who has been married for 35 years, who has sacrificed her own career to stay at home to raise the children, done most of the work raising the children, maintained the house for the household, and entertained her husband's clients is entitled to (a) no more than a minimal amount of payment for a reasonable *needs* allowance; and then (b) only for 3 years – even though her husband was able to expand his earnings to \$500,000 a year. The bill places a 20% ceiling on the *needs* allowance, which is unfair, but why would it even reach 20% if it is a *needs* allowance? Nor does it do much to promote the concept of marriage.

4. **Our Example of a Client Who Would Suffer Under this Bill.**

Parties were married in 1997. Our client was diagnosed with a brain tumor in 10/2004. Client is 33, opposing party is 40. They have one child. Client worked throughout the marriage until the brain tumor was diagnosed. Right after the diagnosis, the opposing party became abusive by hitting her in the head. He hit her in the head one week before she started radiation therapy and the domestic violence caused the separation. She cannot work at this point. The treatment is not successful as the tumor has not been reduced. There are insurance issues, too. Client will have to pay \$430/mo to continue on opposing party's insurance if she is not eligible for Badger care. Under the proposed changes to the maintenance statute this lady could not get maintenance because they were not married 15 years. The man makes about \$50,000 per year.